

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JANE E. DAVIS,	:	APPEAL NO. C-090551
Petitioner-Appellee,	:	TRIAL NO. SK0900095
vs.	:	
DANIEL R. HALLER,	:	<i>JUDGMENT ENTRY.</i>
Respondent-Appellant,	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Respondent-appellant Daniel R. Haller, pro se, presents on appeal a single assignment of error challenging the judgment of the Hamilton County Common Pleas Court overruling his objections and adopting a magistrate’s decision granting petitioner-appellee Jane Davis’s petition for a five-year civil stalking protection order (“CSPO”) pursuant to R.C. 2903.14.

In February 2009, Davis filed a petition for a CSPO against Haller, her daughter Jillian’s boyfriend. In the petition, Davis alleged that Haller had harassed her for the past 12 to 18 months by phone, voice mail, and text messages, despite repeated requests from herself and her family members for Haller to leave her alone. Davis further alleged that the communications were mentally distressing and that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

she was taking medication for anxiety and depression. Attached to her petition were a series of recent text messages she had received from Haller, as well as her responses.

Following an ex parte hearing, a magistrate granted Davis's petition and issued a temporary order of protection. The magistrate subsequently held a full hearing where both Davis and Haller were permitted to present their evidence and arguments, and Haller was given the opportunity to cross-examine Davis and her witnesses.

Davis testified that her daughter Jillian had a drug addiction. When Haller met Jillian, he decided that he was going to help her. Problems quickly arose between Davis and Haller when Jillian started telling her about some of the cruel and controlling things that Haller had done to her. When she confronted Haller about her daughter's accusations, he admitted everything.

After their confrontation, Haller started contacting her by email and phone. He would repeatedly leave harassing voice mail and text messages about Jillian. Davis testified that she had attached the last five text messages from Haller to her petition, as well as the following text message that she had sent to Haller: "I am telling you for the last time, as you have been told before, no phone contact with me, no personal contact with me, or criminal charges will follow. I have had enough." Davis testified that, almost immediately after this message, Haller had contacted her two more times.

Shortly thereafter, she contacted the police about Haller. Haller then tried to have her arrested for the theft of Jillian's cellular phone. After speaking with a detective on the theft case, she filed a petition for a CSPO and a telecommunication-

harassment charge against Haller. She testified that Haller had not contacted her following mediation on the harassment charge.

Davis's daughter, Jaime, testified that she had called Haller within the past six months and told him that if he did not stop contacting her mother, her mother would press criminal charges against him. Haller told her that he did not have to stop contacting her mother and that nothing would happen to him if Davis pursued criminal charges because he was a former police officer. Davis's sister, Jeanette, testified that she had overheard Jaime's conversation with Haller because Jaime had put the call on a speaker phone. She corroborated Jaime's testimony about the substance of the conversation. Additionally, she testified that she had also confronted Haller about sending text messages to Davis, but that Haller had told her that he did not have to stop contacting Davis, and that what he was doing was none of her business.

Davis's husband, Grover, testified that his wife had repeatedly asked Haller to leave her alone, but that Haller had kept calling her and coming to their home. He testified that his wife would get extremely upset and agitated by all the strange things that Haller would say about their daughter Jillian. He testified that, two weeks after his wife had called the police about Haller, Haller had come to their home and sat on their back porch, watching their youngest daughter, Jaclyn, and her friends swimming in their pool. He testified that Haller had shown up uninvited at their home on three or four separate occasions, and that he had to tell Haller to leave.

Davis's friend Martha testified that she had listened to some of the voice mail that Haller had left on Davis's phone; that she had been sitting with Davis on numerous occasions when Davis had received text messages from Haller; and that Davis would physically shake when she saw an incoming message from Haller.

Martha further testified that she had seen Davis telling Haller to stop sending text messages to her.

Haller testified that he had met Jillian in November 2006 and that they had begun dating. Davis was initially very welcoming, but “for some unknown reason” he was no longer welcome in the Davis home after April 2007. He testified that he was permitted to knock on their door and to wait outside for Jillian when she was visiting her family. One day in the summer of 2008, he was looking for Jillian at the Davis home. When he knocked on the door and no one answered, he went to the back yard to see if Jillian was in the pool. Davis’s minor daughter called for her father, Grover. Grover then told him that he was no longer permitted in the yard.

Haller admitted that he had contacted Davis numerous times on her cellular phone, but he denied that any of the messages had been harassing. He told the magistrate that many of the text messages had reasonable explanations—that he and Davis needed to work together to help Jillian. Haller further testified that he had been employed as a Hamilton County Sheriff’s deputy from 1989 to 1993 and as a police officer for Covington, Kentucky, in 1995 and 1996. Since that time, he had been doing computer work.

At the conclusion of the hearing, the magistrate stated that he did not believe Haller’s testimony. Consequently, he granted Davis’s petition for a CSPO. Haller filed timely objections to the magistrate’s decision and moved to admit additional evidence on the objections. This evidence consisted of (1) a photo of a pair of jeans; (2) a putt-putt scorecard; (3) a photograph of a knife; (4) a copy of his yearly review as a Hamilton County Deputy Sheriff; and (5) a copy of his oath of office as a police officer for Covington, Kentucky. Haller had also subpoenaed Davis’s husband, her minor daughter, her grandson, and two other individuals to testify on his behalf.

After hearing argument from Haller and Davis on Haller's objections, the trial court denied Haller's motion to admit the additional evidence. The trial court told Haller that it had conducted an independent review of the transcript and the facts and conclusions in the magistrate's decision; it then overruled Haller's objections and adopted the magistrate's decision.

On appeal, Haller's sole assignment of error contains a number of arguments, which we construe as follows: (1) certain comments by the magistrate and the trial court denied him a fair trial; (2) the trial court erred in adopting the magistrate's decision without providing him with an opportunity to present additional evidence; and (3) the evidence at the hearing was inadequate to support the order of protection against him.

With respect to Haller's first argument, there is nothing in the record to support Haller's contention that he was deprived of a fair hearing or that the magistrate and the trial court were biased against him. The evidence Haller cites in his brief does not demonstrate any bias on the part of the magistrate or the trial court, nor does it demonstrate any unfairness. Thus, we find Haller's first argument meritless.

Haller next argues that the trial court erred when it prohibited him from presenting additional evidence and testimony before ruling on his objections. But Civ.R. 53(D)(4)(d) provides that a trial court may refuse to hear additional evidence "unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate." Here, the trial court told Haller that it [wa]s not going to hear any additional evidence today because [he] ha[d] not demonstrated * * * that he could not have produced this evidence at the original hearing on June 5th." Based upon our review of the record,

we cannot conclude that the trial court abused its discretion in denying Haller's request to produce this additional evidence.

Finally, Haller argues that the evidence at the hearing was inadequate to support the order of protection against him. But most of the facts Haller cites in support of this argument are not contained in the record before us and have not been properly preserved for our review.² Furthermore, after reviewing the transcript of the hearing, we find Haller's argument meritless. The magistrate found that Davis had established by a preponderance of the evidence a pattern of conduct by Haller over a period of eighteen months that had caused Davis to suffer mental distress, thus warranting the protection order.³ The trial court, furthermore, did not abuse its discretion in adopting the magistrate's decision to grant the CSPO, when the evidence before the magistrate supported that decision.⁴ As a result, we overrule Haller's sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 26, 2010

per order of the Court _____.
Presiding Judge

² See *State ex rel. Montgomery Cty Public Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508, at ¶20.

³ See R.C. 2903.14; *Lindsay v. Jackson* (Sept. 8, 2000), 1st Dist. No. C-990786; see, also, *Guthrie v. Long*, 10th Dist. No. 04AP-913, 2005-Ohio-1541.

⁴ *Howard v. Wilson*, 2nd Dist. No. 23501, 2010-Ohio-1125, at ¶6-8.